

02-23465

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:
Case Number BKY 02-92417-DDO

Jeffery Volkman
Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Midfirst Bank moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 9:30 a.m., on September 27, 2004, in Courtroom No. 228A, at the United States Courthouse, at 200 U.S. Courthouse, 316 N. Robert Street, St Paul, MN.
3. Any response to this motion must be filed and delivered not later than September 22, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 16, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on May 19, 2000. The case is now pending in this court.
5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.
6. On May 19, 2004, Jeffery W. Volkman, single made, executed and delivered to Cendant Mortgage d/b/a Burnet Home Loans his Note (hereinafter referred to as the "Note"), in the original principal amount of \$116,922.00 bearing interest from the date thereof at the rate of 8.125% per annum until paid, payable in monthly installments of \$868.15 commencing on July 1, 2000 and on the first day of each and every calendar month thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On May 19, 2004, to secure the payment of the Note, Jeffery W. Volkman, single, executed and delivered to Cendant Mortgage d/b/a Burnet Home Loans his Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Washington County, Minnesota, legally described as follows:

Lot 8, Block 14, Wind Wood Plat Two, Washington County, Minnesota

which property has an address of: 6761 SHERWOOD RD., WOODBURY, MN 55125. The mortgage was filed for record in the office of the Recorder, County of Washington, on June 30, 2000, as Document No. 3110357, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage assignments are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtor has filed a plan dated November 12, 2002, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtor has not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtor is in arrearage for monthly payments as shown below. The last payment received from Debtor was applied to the April, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

04 payments 1,062.19	\$4,248.76
03 late charges 42.48	\$127.44
Misc. Fees	\$49.48
Attorneys Fees & Costs	\$700.00
TOTAL POST – PETITION	<hr/> \$5,125.68

through Debtors' failure to make current post-petition payments.

Principal	\$113,118.89
Interest to 8/31/04	\$18,812.40
Misc. Fees	\$49.48
Accumulated late fees	\$127.44
Attorneys Fees & Costs	\$900.00
TOTAL	<u>\$133,057.69</u>

11. Debtor has claimed said mortgaged property as exempt pursuant to MSA 510.01.
12. Debtor has represented the value of this property to be \$139,000.00 on the schedules which accompanied their petition.
13. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.
14. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Midfirst Bank moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated: 9-30-04

Signed: /e/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
 Nancy A. Nordmeyer-121356
 Lawrence P. Zielke-152559
 Attorney for Movant
 7300 Metro Boulevard #390
 Edina, MN 55439-2306
 (952) 831-4060

VERIFICATION

I, Katherine Brown, the Bankruptcy admin. of Midfirst Bank, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 20, 2004

Signed:

Katherine Brown

Midfirst Bank,
999 NW Grand Blvd.
STE 100
Oklahoma City, OK 73118-6077

NOTE

Multistate

FHA Case No.

271-8310398-703

May 19th, 2000

[Date]

6761 SHERWOOD ROAD, WOODBURY, MN 55125

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means
Cendant Mortgage D/B/A Burnet Home Loans
and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of **One Hundred Sixteen Thousand Nine Hundred Twenty-Two Dollars and Zero Cents**

Dollars (U.S. \$ 116,922.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of **Eight and One Eighth** percent (8.125 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on **July 1st**, 2000. Any principal and interest remaining on the first day of **June**, 2030, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at **3000 Leadenhall Road Mount Laurel, NJ 08054** or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ **868.15**. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

3110357



Office of the
County Recorder
Washington County, MN

Certified filed and/or recorded on:
2000/06/30 12:05:00 P

3110357



Cindy Koosmann
County Recorder

by *Cindy Koosmann*

WASHINGTON COUNTY

05-30-2000 Receipt No: 44611
Registration tax hereon of \$269.10 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Virginia R. Erdahl, Auditor-Treasurer by DSimonet

[Space Above This Line For Recording Data]

State of Minnesota

MORTGAGE

FHA Case No.

271-8310398-703

19.50

Loan #: 0011271590

THIS MORTGAGE ("Security Instrument") is given on May 19th, 2000
The Mortgagor is JEFFERY W VOLKMAN, AN UNMARRIED MAN

("Borrower"). This Security Instrument is given to Cendant Mortgage D/B/A Burnet Home Loans

which is organized and existing under the laws of New Jersey, and
whose address is 3000 Leadenhall Road Mount Laurel, NJ 08054

("Lender"). Borrower owes Lender the principal sum of
One Hundred Sixteen Thousand Nine Hundred Twenty-Two Dollars and Zero Cents
Dollars (U.S. \$116,922.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on June 1st, 2030

and for interest at the yearly rate of 8.125 percent. This Security
Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph
7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

FHA Minnesota Mortgage - 4/96

VMP-4R(MN) (9803)

Page 1 of 8

Initials: *J.V.*

VMP MORTGAGE FORMS - (800)521-7291

RETURN TO:
Burnet Title

00-10161 / 18984060

3230111



Office of the
County Recorder
Washington County,

Certified filed and/or record
2002/04/18 8:07:1

3230111



Cindy Keen
County Recorder

By: *Cindy Keen*

20-02

Recording Requested By/Return To:
MidFirst Bank
Documentation Department
2730 North Portland
Oklahoma City, OK 73107

Loan #: 0011271590
Name: VOLKMAN
State of: MN
County of: WASHINGTON
ID #: 890388094

Investor #: 46200891
Abstract // Torrens

Assignment of Mortgage

Know all men by these presence, that *Cendant Mortgage Corporation, 3000 Leadenhall Road, Mt. Laurel, NJ 08054, a Corporation existing under the laws of the State of New Jersey, for valuable consideration, the receipt of which hereby acknowledged, does hereby grant, bargain, sell, assign and transfer to:

MidFirst Bank
999 N.W. Grand Boulevard
Suite 100
Oklahoma City, OK 73118

That certain Promissory Note and Mortgage described as follows:

Note and Mortgage Dated: 05/19/2000

Amount: \$116922 Executed by: JEFFERY W VOLKMAN

Clerks file or instrument no: 3110357

Recorded Date: 06/30/2000

Book: Volume: Page:

Address: 6761 SHERWOOD RD, WOODBURY, MN 55125

Please See Attached Exhibit 'A'

Together with the Note therein or referred to, the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

*Formerly Doing Business as PHH US Mortgage Corporation

The undersigned has changed its name or identity from PHH US Mortgage Corp. to PHH Mortgage Services Corp. as a result of amendment to charter or articles of incorporation.

*Formerly Known as PHH Mortgage Services Corporation

The undersigned has changed its name or identity from PHH Mortgage Services Corp. to Cendant Mortgage Corp. as a result of amendment to charter or articles of incorporation.

Dated: 02/12/2002

Witnessed by:

Nanette Smith
Nanette Smith

Prepared by:

Melissa Burger
Melissa Burger

*Cendant Mortgage Corporation
3000 Leadenhall Road
Mt. Laurel, NJ 08054

*Cendant Mortgage Corporation

3000 Leadenhall Road

Mt. Laurel, NJ 08054

By:

Melissa Siegel
Melissa Siegel
Assistant Vice President

Dawn Bolden
Dawn Bolden
Assistant Secretary

State of New Jersey, County of Burlington,

On 02/12/2002, before me, the undersigned, a notary public in and for said State and County, personally appeared Melissa Siegel and Dawn Bolden personally known to me or proved to me on the basis of satisfactory evidence to be Asst. Vice President and Assistant Secretary of the corporation that executed the within instrument, on behalf of the

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 02-92417-DDO
Chapter 13

Jeffery Volkman

Debtor(s)

MEMORANDUM OF LAW

Midfirst Bank ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtor. On the date this case was filed, the Debtor(s) was delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) is in arrears in the total amount of \$5,125.68.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case has failed to make the payments required by the note and mortgage for a period of more than 3 months. Debtor(s) has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$133,057.69. The fair market value of the property is approximately \$139,000.00. Clearly, the Debtor(s) has no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 9.3.04.

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /e/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)


I, **Stephanie Pilegaard** says that on September 3, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Jeffrey Volkman
6761 Sherwood Road
Woodbury, MN 55125

Michael Black, Esq.
265 W. 7th Street
St. Paul, MN 55102


Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

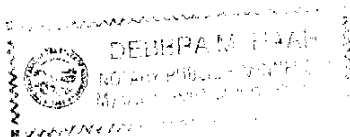


Stephanie Pilegaard

Subscribed and sworn to before me September 3, 2004.



Notary



02-23465
46200891

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re.

Case Number BKY 02-92417-DDO

Jeffery Volkman
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 27, 2004.

THIS CAUSE coming to be heard on the Motion of Midfirst Bank, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Midfirst Bank, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot 8, Block 14, Wind Wood Plat Two, Washington County, Minnesota

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court